

Withdrawal of LEA Designations

Article 2.1 Designation of a Local Agency and the Appointment of Hearing Panels

§ 18011. Definitions.

- (7) ~~"Enactment" means a federal, state, regional, or local statute, ordinance, regulation, permit, or similar provision having the force of law.~~
- (7) "Designations" means a local governing body that selects a local agency to act as its solid waste local enforcement agency in the jurisdiction.
- (8) "Decertification" means the California Integrated Waste Management Board withdraws its approval of designation of a solid waste local enforcement agency.
- (9) "Enactment" means a federal, state, regional, or local statute, ordinance, regulation, permit, or similar provision having the force of law.
- (10) "Enforcement action" means an action of the enforcement agency or the board, taken pursuant to the act or this chapter, including, but not limited to issuing a notice and order, a cease and desist order, cleanup or abatement order, or a corrective action order: to institute a proceeding to modify, suspend, or revoke a permit: to institute a judicial proceeding to obtain an injunction: or to institute a judicial action to obtain civil penalties.
- (11) "Facility" means a solid waste facility as defined in Public Resources Code Section 40194 or disposal site as defined in Public Resources Code Section 40122.
- (12) "Facility operator" means the operating unit, and other person(s) who through a lease, franchise agreement or other arrangement with the owner of the property is granted the approval to operate a solid waste facility, disposal site, transfer or processing station, composting station, or solid waste handling system, or the owner of the property.
- (13) "Illegal site" means a solid waste disposal site that is not permitted and not exempt from obtaining a permit and is not a closed site.
- (14) "Inactive site" means a site that is temporarily idle, for a specific period due to known circumstance and not part of the normal operation pattern contained in the solid waste facilities permit.
- (15) "Local Agency" means a local public agency or department of a county or a city, a joint powers jurisdiction, or a special district.
- (16) "Local Enforcement Agency" (LEA) means an enforcement agency with board certification(s) totally separate from the operating unit(s) of the local governing body. An LEA is a comprehensive solid waste enforcement agency which performs permitting, inspection, and enforcement duties for solid waste handling, and permitted, closed, abandoned, exempt, illegal, and inactive facilities. An LEA is solely responsible for carrying out solid waste enforcement in its jurisdiction as defined in 14 CCR Division 7 and Division 30 of the Public Resources Code. Upon certification(s) the LEA shall have full power to execute the Act and the regulations adopted hereto.

- (17) "Operating unit" means a local agency within the jurisdiction of the designating local governing body that operates, causes to operate, or administers contracts or agreements for any portion of a facility or solid waste handling and disposal system.
- (18) "Owner of the property" means the person or persons owning the fee interest in the property and the person or persons owning any lease-hold interest in the property.
- (19) "Permit" means a solid waste facilities permit.
- (20) "Property" means the real property on which a facility or disposal site, any part thereof, or any support structure exists or is proposed to exist, including any portion of such real property that is not occupied by the facility or any support structure but that is contained within the legal description of the land on which the facility is located as that description is set forth in the most recently recorded deed.
- (21) "Violation" means violation of an enactment.

§ 18056. Withdrawal of Designation by a Local Agency.

(a) A designation of a LEA may be withdrawn by the local governing bodies that originally made the designation. No approval of the board is required for the withdrawal. Notice of the withdrawal shall be given to the board a minimum of 90 days in advance of the effective date of the withdrawal. This shall be done by a local governing body resolution or other official document in the same manner the designation was made. If after 30 days from the withdrawal of designation, no new local agency is designated and issued certification(s), then the board shall become the enforcement agency. When a designation of an LEA is made by a county and its cities comprising a majority of the incorporated cities and containing a majority of the incorporated population, pursuant to Public Resources Code (PRC) Section 43203 (a), any city or the county shall obtain approval to withdraw its designation from all the local governing bodies in contract/resolution within the existing designation.

(b) Notice of designation of a new local agency, upon withdrawal of previous designation, shall be made in the manner specified in Section 18051.

~~(d) If the board withdraws its approval of a designation of an LEA or certification(s) of an LEA, pursuant to Article 1 or Chapter 2 (commencing with Section 43200) of the Public Resources Code, the board shall become the enforcement agency until such time that a designated agency is issued certification by the board.~~

Article 2.3 Board and Local Government Withdrawal of LEA Designations

§ 18085. Effective Date of Withdrawal of Designation of an Enforcement Agency by a Local Governing Body.

(a) A local governing body withdrawal of designation, in conformance with PRC Section § 43206, shall become effective and commence at the end of the current fiscal year. The notice of intent to withdraw designation shall be provided, in writing, to the board and affected local enforcement agency (LEA) at least 90 days prior to the end of the fiscal year.

(b) All enforcement actions, pending violations, orders of corrections, requests for technical reports, or other enforcement agency efforts to achieve compliance with state requirements, including LEA enforcement actions, state minimum standards, and permits in effect at the time of the request for withdrawal, shall remain in effect, under the jurisdiction of the new enforcement agency.

§ 18086. Findings for Board Withdrawal of LEA Designation Approval.

(a) The board may withdraw its approval of a LEA designation when the board makes one or more of the following findings:

(1) The LEA has not taken appropriate enforcement action for any significant violation of state minimum standards or solid waste facilities permit terms and conditions.

(2) The LEA has not fulfilled its responsibilities pursuant to PRC Section 43214 (d).

(3) The LEA has not submitted an Evaluation Workplan for approval, if required by the board.

(4) The LEA has not implemented a board approved Evaluation Workplan, if required by the board.

(5) The LEA fails to provide documentation that the proposed permit is consistent with and is supported by CEQA pursuant to Title 27.

(6) Board determines that the LEAs findings regarding CEQA are inadequate pursuant to Title 27.

§ 18087. Notice for the Withdrawal of LEA Designation Approval.

(a) The withdrawal of LEA designation approval may be executed by the board after the board has given the LEA 30 days notice and after the LEA has time to take corrective action. The board shall notify the LEA of its intention to withdrawal its approval of designation using:

(1) Registered mail.

§ 18088. Full or Partial Withdrawal of LEA Designation by the Board.

(a) When the board finds that a local enforcement agency is not fulfilling its responsibilities, the board may, at its discretion, partially withdraw approval of designation of an LEA and assume responsibility for one or more of an LEA's duties and responsibilities, pursuant to Article 1 of Chapter 2 (commencing with Section 43200) of the Public Resources Code.

(b) The board may elect a full or partial withdrawal of a LEA's designation for a specified period of time. This period may be defined by a future date, or a time by which a specified LEA action (s) or event (s) must take place, as required by the board. Certification suspension is not solely based on an LEA evaluation and is intended for use when, but not limited to the following, as determined by the board:

(1) Loss of sufficient LEA staffing resources to adequately perform its duties and responsibilities.

(2) Loss of the LEA's minimum requirement of REHS technical staff.

(3) When in a LEA jurisdiction, litigation causes the LEA to become ineffective in performing its duties or responsibilities.

(4) When public health and safety or the environment is threatened, the board shall, within 10 days of notifying the LEA that their certification will be temporarily suspended, become the enforcement agency until another local agency is designated locally, approved and certified by the board pursuant to PRC Section 43214 (c).

(c) During a temporary suspension, the board may act as the enforcement agency for specified duties.

(d) The temporary certification suspension of certification shall automatically conclude when the action(s) or event (s) or date specified by the board occurs.

§ 18089. The Board Acting as the Enforcement Agency.

(a) If the board exercises its right to a full withdrawal of approval of a designation or certification(s), pursuant to Article 1 or Chapter 2 of the PRC (commencing with PRC Section 43200), the board shall become the enforcement agency or EA until such time that a designated agency is issued certification by the board.

(b) If the board exercises its right to a partial withdrawal of LEA certification duties, the board shall become the EA only for that portion of LEA duties the board withdraws.

(c) The board, as the EA, may enter into agreements or contracts at its discretion, with any certified enforcement agency for the purpose of delegating its EA duties within any jurisdiction, until a local agency is designated, approved and certified by the Board.

(d) The board may charge for operations pursuant to PRC 43212 (a) while performing EA duties.

§ 18090. Processes for Notice, Public Hearing, the Admission of Evidence, and Final Action by the Board on its Withdrawal of LEA Designation.

(a) The board process for conducting a public hearing on its full or partial withdrawal of LEA designation shall comply with the format utilized by the board for public hearings. The agenda items presented for this purpose before the board or its committee shall include, but not be limited to the following:

(1) LEA evaluation findings pursuant to statutory requirements in Division 30, Part 4, Chapter 2 of the Public Resources Code, and regulatory requirements pursuant to 14 CCR, Division 7, Chapter 5.

(2) The status of LEA compliance with its evaluation workplan, if any.

(3) Any prior board action (s), technical assistance, or guidance to the LEA to provide for successful LEA fulfillment of evaluation workplan stipulations or issues.

(4) Outcome of any administrative conference held to resolve outstanding LEA evaluation issues including the progress status of any conference finding and/or agreement.

(5) Any circumstances or processes that may be deemed beyond the LEA's control which result in non-compliance with evaluation workplan stipulations.

(6) A delineation of appropriate board action options as authorized by statute and regulation.

(b) For non-emergency situations, board withdrawal of designation approval, partial or full withdrawal of the approval of designation, temporary suspension of LEA certification, or

assumption of specified LEA duties for a jurisdiction shall include notice of the pending action, a public hearing, rules for the admission of evidence, and final action.

(c) The LEA shall be notified and provided with a copy of the applicable agenda packet including any attachments via registered mail. Any other interested parties shall, upon making a written request, be provided with notification and the related agenda packet if requested.

(1) If the LEA disputes the board's findings, the LEA must provide, at the time of the public hearing, any supporting data to refute the board's findings.

(d) Evidence shall be limited to factual statements, supporting data; charts, spreadsheets, electronic displays, and related attachments all presented within an agenda item format, including the staff testimony presented at the hearing.

(e) The LEA shall be afforded the opportunity to present evidence, respond to evidence presented by board staff, and present written and oral testimony on the issues involved in the hearing.

(f) Technical rules relating to evidence and witnesses shall not apply and only relevant evidence shall be admissible.

(g) Board shall make the final decision based exclusively on the evidence introduced during the hearing process.

(h) The decision shall be supported by the evidence in the record of the public hearing as described under the board process for admission of evidence

(i) The decision shall only include action (s) authorized by Division 30, Part 4 of the Public Resources Code or any regulations adopted thereof.

(j) The board decision shall be rendered upon conclusion of the hearing in the form of a motion, resolution, a written statement of decision, or as the board deems appropriate under the circumstance at hand and shall notify the LEA in writing within 10 days of the hearing date.